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March 15, 2004

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SETTLEMENT DOCUMENT
SUBJECT TO FRE 408 AND COMPARABLE STATE LAW PROTECTION

Thomas Turner, Esquire
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Connie Puchalski, Esquire
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Via Facsimile Transmittal
And First Class Mail

Re: Old American Zinc Superfund Site ("Site")
Fairmont City, IL (St. Clair County)

Dear Mr. Turner and Ms. Puchalski:

On Thursday, March 11, 2004, Mr. Turner, Mr. Daniel Pinkson, counsel with the Department of Justice representing the General Services Administration ("GSA"), and I had a lengthy conference call regarding resolution of issues related to performance of the Remedial Investigation and Feasibility Study ("RI/FS") for the Site. One of BlueTee's primary goals in addressing issues at the Site is to ensure that its contribution rights against XTRA Intermodal, Inc., ("XTRA"), the recalcitrant property owner, are preserved. In addition, Blue Tee wishes to take such action as is necessary to allow cost sharing with the GSA, another potentially responsible party ("PRP") identified by the United States Environmental Protection Agency ("USEPA"). With respect to the latter point, on Thursday, Mr. Pinkson advised me that GSA will not share in the cost of the RI/FS if USEPA issues a Unilateral Administrative Order to implement the RI/FS. In light of these developments, I am writing this letter to make certain that Blue Tee Corp.'s

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(Blue Tee's) concerns and goals are clearly understood and hope that doing so will expedite resolution of the issues surrounding the authority for performance of the RI/FS.

First, let me address several comments or concerns that have been suggested by Mr. Turner relating to Blue Tee's desire (or lack of desire) to resolve this matter. As you are aware, Blue Tee is the only party identified by the USEPA as a PRP that has undertaken work with respect to the Site. In fact, Blue Tee has spent over $2,000,000 implementing the removal action selected by USEPA for the Site. Neither of the other two parties identified as PRPs, GSA or XTRA, the property owner, has taken any action or spent any money to address the Site. Further, Blue Tee consistently has advised USEPA that it is willing to implement the RI/FS provided that GSA and XTRA are appropriately involved. While GSA has advised that it is willing to share in the cost of the RI/FS through a cost-sharing agreement, XTRA consistently has advised that it will not implement the RI/FS and that it will not share in the cost of the work. In that context, I have repeatedly sought assurances from USEPA that it will take all actions within its power to ensure that XTRA does in fact participate in the RI/FS or the funding of the same. In any event, given XTRA's recalcitrance, it is imperative that Blue Tee also has contribution rights against XTRA. Recent legal events have given rise to significant uncertainty, apparently not just on Blue Tee's part, but on the part of the United States, as to how such rights can be protected. I address this issue in more detail below.

One of the concerns expressed by Mr. Turner in our recent call is the length of time that we have been discussing an Administrative Order on Consent ("AOC") for the RI/FS. Frankly, I also have been concerned and frustrated by the progress of this matter; however, I do not believe that this rate of progress is due to Blue Tee alone. Many factors have contributed to the amount of time that we have been discussing the AOC. As noted above, GSA has, in the past, indicated that it would participate in the RI/FS. Therefore, Mr. Pinkston and I have been negotiating a cost-sharing agreement on which we recently reached agreement in principle. However, and without making a criticism, many of the relevant issues have required extensive consultation by Mr. Pinkston with his management and his client. This has contributed to the length of time that it has taken to reach our agreement in principle on the cost-sharing agreement, which in turn has impacted discussions with EPA on the AOC language.

Another factor that has contributed to the pace of the resolution of this matter is the position that USEPA has taken regarding the Technical Assistance Grant ("TAG"). The TAG was not even raised as an issue by USEPA when the draft AOC was originally sent to me. Even after it was raised, USEPA's position changed over the course of the negotiations. I have fully expressed my position on the TAG; however, I wish to point out that the USEPA's ultimate insistence on Blue Tee's funding of the TAG is one of the factors that caused this negotiation to take so much time. It is only the agreement in principle that Blue Tee has reached with GSA that will allow us to resolve this issue with USEPA.

Finally, negations in this matter have been delayed because resolution of technical issues has also been complicated by the USEPA's lack of flexibility and XTRA's recalcitrance. For example, the Site is a former smelter for which there is no reason to believe that organics are constituents of concern ("COCs") and it is Blue Tee's understanding that there are nearby sites for which organics are constituents of concern. In Blue Tee's initial comments on the Statement of Work ("SOW"), it was requested that the COCs be limited to those reasonably expected to be present due to Site operations. Blue Tee believed this to be especially appropriate inasmuch as the Site owner would not be participating in the work and, if it wished, USEPA could order XTRA to implement such work. USEPA advised us that the SOW would not be modified to limit the COCs, but that Blue Tee would be able to demonstrate through preliminary testing that organics are not a Site-related issue and that Blue Tee would not have to carry them through the entire RI/FS process. However, no modification of the SOW reflecting that concept has been incorporated. By way of further example, Blue Tee has requested that the SOW be revised to provide for submission of a Work Plan, a concept fully consistent with the National Contingency Plan, USEPA practice, and current USEPA guidance. However, this request has repeatedly been rejected. In light of USEPA's refusal to make such reasonable changes to the SOW, Blue Tee remains concerned about what will transpire when the RI/FS is implemented. In sum, and without going into excessive detail, these are a few of the reasons why negotiations on the RI/FS have extended so long.

Another position suggested by Mr. Turner is the insincerity of Blue Tee's concern regarding the ramifications of Aviall Services, Inc. v. Cooper Industries, Inc., 312 F.3d 677 (2003). As noted above, these recent legal developments have caused Blue Tee to examine how best to proceed with the RI/FS. As I have explained, in light of XTRA's recalcitrance, it is imperative that Blue Tee preserve its contribution rights against XTRA. The Fifth Circuit's original panel decision in the Aviall case, as well Mr. Pinkston's most recent expressions of the United States' view of contribution rights have caused Blue Tee concern in this regard. Blue Tee believes that the Fifth Circuit's decision on contribution rights under 42 U.S.C. Section 9613(f)(1) is correct, but the Supreme Court's grant of certiorari is troublesome. Also, both Mr. Pinkston and Mr. Turner have pointed out to me the United States' position is that a Unilateral Administrative Order ("UAO") under §106 (42 U.S.C. §9606) does not give rise to contribution rights. In fact, Mr. Pinkston advised me, for the first time, in our conference call on Thursday, that if a UAO is issued, GSA will not enter into the negotiated cost-sharing agreement. Of further concern is the fact that, at present, Blue Tee does not know the United States' position on whether an AOC for an RI/FS is sufficient to confer contribution rights under 42 U.S.C. §113(f)(3). Mr. Pinkston was unable to advise me as to the United States' view on whether or not an AOC for the RI/FS is sufficient to give rise to contribution rights under 42 U.S.C. §9613(f)(3) and he currently is seeking guidance on that point. While Blue Tee firmly believes that an AOC for an RI/FS is an "administrative settlement" for purposes of Section 113(f)(3) such that a party to such an

AOC does have contribution rights, in light of the recent unexpected legal decisions, Blue Tee is not willing to take a risk on what position the Supreme Court will adopt.

Therefore, it appears that if Blue Tee is to avoid any uncertainty regarding preservation of its contribution rights, judicial action under Section 106 culminating in a judicial Consent Decree is the necessary course of action. This course was suggested during our recent conference call and Mr. Turner indicated that he would review this option. However, Mr. Turner seemed negative about this possibility. He expressed the belief that finalizing a Consent Decree would take too long. Blue Tee believes that a Consent Decree would be more simple, less time consuming, and more likely to achieve the intended result than issuance of a UAO. If a UAO is issued, the GSA already has advised that it will not pay its fair share of the work. Blue Tee also knows that it is the United States' position that a UAO does not give rise to contribution rights; thus, it is very likely that XTRA also will be unwilling to comply with a UAO. In that context, Blue Tee seriously will have to consider the availability of the "sufficient cause" defense versus the risk of compliance and finding that the ultimate legal decision is that it does not have a contribution right.

I recognize that entry of a Consent Decree is a new suggestion, but it is prompted by rather extraordinary developments in the law, as well as the United States' position. Further, Blue Tee's goal of protecting its contribution rights is not a new development. Since Blue Tee is the only party that has been willing to take the actions that the USEPA believes are necessary to address the Site, it is only appropriate that USEPA work with Blue Tee so that it is not disadvantaged by such cooperation. Blue Tee has expressed its willingness to expedite discussions on a Consent Decree and Blue Tee representatives are willing to go to Chicago for a meeting to convert the substance of the draft AOC to a Consent Decree. Further, Blue Tee has indicated its willingness to begin drafting the initial deliverables during the period of time that Blue Tee awaits the finalization of the Consent Decree. Blue Tee remains committed to resolving Site issues, however, the status of current legal issues requires creative minds to work together. We look forward to meeting with you for this purpose.

If you have any questions regarding Blue Tee's position or concerns, please do not hesitate to call me.

Sincerely,

Terri Faye

Terrance Gileo Faye

cc: Daniel J. Pinkston, Esquire, via Facsimile Transmittal Only

Michelle Gutman, Esquire, Via Facsimile Transmittal Only
Richard Greenberg, Esquire, Via Facsimile Transmittal Only
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